

AMENDED IN SENATE AUGUST 16, 2012

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN SENATE MAY 31, 2012

AMENDED IN ASSEMBLY MAY 3, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

AMENDED IN ASSEMBLY MARCH 19, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2009**

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**Introduced by Assembly Member Galgiani**

February 23, 2012

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An act to add Section 120392.3 to, and to repeal Section 104900 of, the Health and Safety Code, relating to communicable disease.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2009, as amended, Galgiani. Communicable disease: vaccinations.

Under existing law, the State Department of Public Health administers various programs for the protection of public health. The department provides a biennial report to the Legislature on the immunization status of young children in California.

Existing law requires the State Department of Public Health to provide appropriate flu vaccine to local governmental or private nonprofit agencies at no charge in order that the agencies may provide the vaccine, at a minimal cost, at accessible locations in the order of priority first for all persons 60 years of age or older in this state and then to any other

high-risk groups identified by the United States Public Health Service. The department and the California Department of Aging are required to prepare, publish, and disseminate information regarding the availability of the vaccine and the effectiveness of the vaccine in protecting the health of older persons.

This bill would eliminate the priority order described above. The bill would allow the department to provide guidance to local agencies as to whether one or more population groups are to have priority for the flu vaccine offered through this program, as specified. The bill would exempt these provisions from the Administrative Procedure Act. The bill would require, in the absence of department guidance, local agencies to be guided by the influenza recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. *This bill would authorize the department to also provide appropriate vaccine that prevents other respiratory infections to local government or private nonprofit agencies.* The bill would eliminate provisions requiring the vaccine to be administered by physicians and nurses, as specified. The bill would make findings and declarations regarding the transmission of influenza by children to adults and the elderly.

~~By increasing the duties of local officials, this bill would impose a state-mandated local program.~~

Existing law immunizes a private, nonprofit volunteer agency whose involvement with the above-described immunization program is limited to the provision of a clinic site or promotional and logistical support, as specified, or any employee or member thereof, from liability for any injury caused by an act or omission in the administration of the vaccine or other immunizing agent to certain persons, if specified conditions are met.

This bill would extend the immunity ~~of the~~ *provided to a private, nonprofit volunteer agency, as described above,* to circumstances when the vaccine or other immunizing agent is administered to any person.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature hereby finds and declares all of  
2 the following:  
3     (a) The federal Centers for Disease Control and Prevention  
4 (CDC) recommend annual seasonal influenza vaccination for all  
5 persons six months of age and older.  
6     (b) Current law related to prioritization for influenza vaccines  
7 is outdated and needs to be updated to reflect current CDC  
8 recommendations.  
9     (c) Children have the highest rates of influenza infection and  
10 schoolaged children are the major vectors for influenza  
11 transmission that spread the virus to adults and the elderly in the  
12 community.  
13     (d) Eligible low-income and uninsured children can access  
14 vaccine at no cost through the federally funded Vaccines for  
15 Children (VFC) Program.  
16     SEC. 2. Section 104900 of the Health and Safety Code is  
17 repealed.  
18     SEC. 3. Section 120392.3 is added to the Health and Safety  
19 Code, to read:  
20     120392.3. (a) The department shall provide appropriate flu  
21 vaccine to local governmental or private, nonprofit agencies at no  
22 charge in order that the agencies may provide the vaccine, at a  
23 minimal cost, at accessible locations. The department and the  
24 California Department of Aging shall prepare, publish, and  
25 disseminate information regarding the availability of the vaccine  
26 and the effectiveness of the vaccine in protecting the health of  
27 older persons.  
28     (b) In administering this section, the department may provide  
29 guidance to local agencies as to whether one or more population  
30 groups shall have priority for the flu vaccine offered through this  
31 program. In developing this guidance, the department shall consider  
32 the influenza recommendations of the federal Centers for Disease  
33 Control and Prevention's Advisory Committee on Immunization  
34 Practices (ACIP) or other criteria in order to ensure that the  
35 vaccination program is efficient and effective in meeting public

1 health goals. Any guidance issued pursuant to this subdivision  
2 shall be exempt from the rulemaking provisions of the  
3 Administrative Procedure Act (Chapter 3.5 (commencing with  
4 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
5 Code). In the absence of guidance from the department, local  
6 agencies shall be guided by the influenza recommendations of the  
7 ACIP.

8 (c) The department may provide appropriate ~~pneumonia vaccine~~  
9 *vaccine that prevents other respiratory infections* to local  
10 governmental or private, nonprofit agencies at no charge in order  
11 that the agencies may provide the vaccine, at a minimal cost, at  
12 accessible locations for groups identified as high risk by the ACIP.

13 (d) The program shall be designed to use voluntary assistance  
14 from public or private sectors in administering the vaccines.  
15 However, local governmental or private, nonprofit agencies may  
16 charge and retain a fee not exceeding two dollars (\$2) per person  
17 to offset administrative operating costs.

18 (e) Except when the department determines that it is not feasible  
19 to use federal funds due to excessive administrative costs, the  
20 department shall seek and use available federal funds to the  
21 maximum extent possible for the cost of the vaccine, the cost of  
22 administering the vaccine, and the minimal fee charged under this  
23 section, including reimbursement under the Medi-Cal program for  
24 persons eligible therefor to the extent permitted by federal law.

25 (f) A private, nonprofit volunteer agency whose involvement  
26 with an immunization program governed by this section is limited  
27 to the provision of a clinic site or promotional and logistical support  
28 pursuant to subdivision (c), or any employee or member thereof,  
29 shall not be liable for any injury caused by an act or omission in  
30 the administration of the vaccine or other immunizing agent, if the  
31 immunization is performed pursuant to this section in conformity  
32 with applicable federal, state, or local governmental standards and  
33 the act or omission does not constitute willful misconduct or gross  
34 negligence. As used in this subdivision, “injury” includes the  
35 residual effects of the vaccine or other immunizing agent. It is the  
36 intent of the Legislature in adding this subdivision to affect only  
37 the liability of private, nonprofit volunteer agencies and their  
38 members that are not health facilities, as defined in Section 1250.

1 (g) This section shall not be construed to require the physical  
2 presence of a directing or supervising physician, or the examination  
3 by a physician of persons to be tested or immunized.

4 ~~SEC. 4. If the Commission on State Mandates determines that~~  
5 ~~this act contains costs mandated by the state, reimbursement to~~  
6 ~~local agencies and school districts for those costs shall be made~~  
7 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
8 ~~4 of Title 2 of the Government Code.~~

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